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EXAMINER

GELIN, JEAN ALLAND

ART UNIT	PAPER NUMBER
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2681

DATE MAILED: 04/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/997,453

**Applicant(s)**

SMITH, MALCOLM M.

**Examiner**

Jean A Gelin

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 November 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-60 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 3, 11, 12, 15, 23, 24, 27, 35, 36, 39, 47, 48, 51, 59 and 60 is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-10, 13, 14, 16-22, 25, 26, 28-34, 37, 38, 40-46, 49, 50 and 52-58 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/22/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Drawings*

1. This is in response to the Applicant's amendments and arguments filed on November 10, 2004 in which claims 3, 11, 12, 15, 23, 24, 27, 35, 36, 39, 47, 48, 51, 59, and 60 have been amended. Claims 1-60 are currently pending.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, 4-10, 13, 14, 16-22, 25, 26, 28-34, 37, 38, 40-46, 49, 50, and 52-58 are rejected under 35 U.S.C. 102(b) as being anticipated by Neumiller et al. (US 6,141,559).

Regarding claims 1, 25, Neumiller et al. teaches a communication system (fig. 1), comprising: a base station controller (common in wireless communication system to manage BTS 103-109); and at least one base transceiver station (BTS 103) in communication with the base station controller (col. 3, lines 11-32), wherein at least one of the base station controller and the at least one base transceiver station is dynamically selected, by a selection procedure, to perform a physical channel function (col. 3, lines 33-67), the selection procedure comprising determining at least one characteristic of at least one of at least one set of data carried by the at least one base transceiver station

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(col. 3, lines 49-51), and transmission of at least one data signal representing the at least one set of data (col. 4, lines 1-62).

Regarding claims 2, 26, Neumiller et al. teaches wherein the physical channel function comprises at least one of: a data selection function operating upon the at least one set of data (the set of data frames received, col. 4, lines 13-34); and a data distribution function operating upon the at least one set of data (col. 4, lines 26-67).

Regarding claims 4-6, 28-30, Neumiller et al. teaches wherein the selection procedure is performed for a first user, thereby generating a first selection result, and wherein the selection procedure is further performed for a second user, thereby generating a second selection result, the first and second selection results being independent from each other (col. 2, lines 40-54).

Regarding claims 7-10, 31-34, the phrases performed for a first communication session and for a first handoff event are interpreted as performed for a first user, hence they are rejected for the same reasons recited in claims 4-6.

Regarding claims 13, 37, Neumiller et al. teaches a method of communicating, comprising: determining at least one characteristic of at least one of at least one set of data carried by at least one base transceiver station in communication with a base station controller (i.e., message request for handover purpose corresponds to the set of data, col. 5, lines 23-30), and transmission of at least one data signal representing the at least one set of data (i.e., message is routed to the switch, col. 5, lines 27-30); and using the at least one characteristic to dynamically select at least one of the base station controller and the at least one base transceiver station to perform a physical

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channel function (i.e., selecting the base station anchoring to perform communication, col. 5, line 30 to col. 6, line 15).

Regarding claims 14, 38, Neumiller et al. teaches wherein the physical channel function comprises at least one of: a data selection function operating upon the at least one set of data (the set of data frames received, col. 4, lines 13-34); and a data distribution function operating upon the at least one set of data (col. 4, lines 26-67).

Regarding claims 16-18, 40-42, Neumiller et al. teaches wherein the selection procedure is performed for a first user, thereby generating a first selection result, and wherein the selection procedure is further performed for a second user, thereby generating a second selection result, the first and second selection results being independent from each other (col. 2, lines 40-54).

Regarding claims 19-22, 43-46, the phrases performed for a first communication session and for a first handoff event are interpreted as performed for a first user, hence they are rejected for the same reasons recited in claims 4-6.

Regarding claims 49, Neumiller et al. teaches communication system (fig. 1), comprising: a first network (ISDN); a gateway (i.e., gateway 115 may connect to any number of networks, col. 3, lines 11-32) connecting the first network to a second network (LAN); a mobile unit (113); a base station controller (corresponding to switch 101) in communication with the first network (ISDN); and at least one base transceiver station (103) in communication with the mobile unit (113) and the first network (ISDN), wherein at least one of the base station controller (101) and the at least one base transceiver station (103) is dynamically selected, by a selection procedure, to perform a

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physical channel function (col. 3, lines 33-67), the selection procedure comprising determining at least one characteristic of at least one of at least one set of data carried by the at least one base transceiver station (col. 3, lines 49-51), and transmission of at least one data signal representing the at least one set of data (col. 4, lines 1-62).

Regarding claims 50, Neumiller et al. teaches wherein the physical channel function comprises at least one of: a data selection function operating upon the at least one set of data (the set of data frames received, col. 4, lines 13-34); and a data distribution function operating upon the at least one set of data (col. 4, lines 26-67).

Regarding claims 52-54, Neumiller et al. teaches wherein the selection procedure is performed for a first user, thereby generating a first selection result, and wherein the selection procedure is further performed for a second user, thereby generating a second selection result, the first and second selection results being independent from each other (col. 2, lines 40-54).

Regarding claims 55-58, the phrases performed for a first communication session and performed for a first handoff event are interpreted as performed for a first user; hence they are rejected for the same reasons recited in claims 4-6.

#### ***Allowable Subject Matter***

4. Claims 3, 11, 12, 15, 23, 24, 27, 35, 36, 39, 47, 48, 51, 59, and 60 have been amended into independent form. Therefore, they are allowed in view of the applicant amendment.

### ***Response to Arguments***

5. Applicant's arguments filed on 11/10/2004 have been fully considered but they are not persuasive.

As per claims 1, 13, 25, 37, and 49, the Applicant argues that the claims recite the ability to dynamically select at least one of a base station controller and the at least one of a base transceiver station to perform a physical channel function. By contrast, the Neumiller patent is concerned with an anchor function for the call and is not concerned with the physical channel function. However, the Examiner disagrees with the preceding argument. The call anchoring base station controls and provides link for communication, which is the function of physical channel. The selection of a base station with the lowest work load to perform selection, distribution, and call processing functions for the particular call includes the function of physical channel recited in the claims. Inherently, the anchoring base station assigns physical channel to the communications system in selecting base stations via switch 101 to set up calls. Therefore, the rejection is maintained and made final.

### ***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jean A Gelin whose telephone number is (571) 272-7842. The examiner can normally be reached on 9:30 AM to 7:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Emmanuel Moise can be reached on (571) 272-3865. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JGelin  
April 19, 2005

JEAN GELIN  
PRIMARY EXAMINER

*Jean Allard Gelin*